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19 *Lead Counsel for Lead Plaintiff*
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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT CALIFORNIA

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24)
25 IN RE RACKABLE SYSTEMS, INC.) Case No. C-09-0222-CW
26 SECURITIES LITIGATION)
27)
28 THIS DOCUMENT RELATES TO:) CLASS ACTION
29 ALL ACTIONS)
30)

31 **STIPULATION AND [PROPOSED] ORDER REGARDING THE FILING AND**
32 **BRIEFING OF PLAINTIFFS' SECOND AMENDED COMPLAINT**

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34 STIPULATION AND [PROPOSED] ORDER ON THE FILING AND
35 BRIEFING OF PLAINTIFFS' SECOND AMENDED COMPLAINT

36 Case No. C-09-0222-CW

1 WHEREAS, on June 15, 2009, Lead Plaintiffs filed their Amended Complaint for
2 Violations of the Federal Securities Laws (“Amended Complaint”);

3 WHEREAS on August 13, 2009, Defendants filed a motion to dismiss the Amended
4 Complaint, which motion was briefed by the parties;

5 WHEREAS, on November 19, 2009, a hearing was held on Defendants’ motion to
6 dismiss the Amended Complaint;

7 WHEREAS, at the conclusion of the hearing, the Court indicated:

8 (a) The Court was taking the matter under submission to “take another look at it,”
9 but was “likely to dismiss with leave to amend” some or all of the allegations supporting Lead
10 Plaintiffs’ securities fraud claims (*see* Docket Entry No. 43, Hearing Transcript, at 13:21-23);

11 (b) The Court had not ruled upon the motion from the bench, but would instead issue
12 an order ruling upon the pending motion to dismiss (*see* Hearing Transcript at 14:23-15:1; *see*
13 also Docket Entry No. 42, Minute Order, indicating matter “Under Submission” with an Order
14 to be prepared by the Court); and

15 (c) That, with respect to those portions of the Amended Complaint dismissed with
16 leave to amend, the Second Amended Complaint (“SAC”) should be filed during the “second
17 week of January,” 2010, and, following a six-week briefing schedule, the Case Management
18 Conference will be conducted on May 11, 2010, “assuming the pleadings are settled by then”
19 (*see* Hearing Transcript at 14:2-15:7; *see also* Docket Entry No. 42, Minute Order, Notes
20 setting forth filing and briefing schedule; new Case Management Conference date);

21 WHEREAS the parties respectfully submit that the most efficient manner in which to
22 proceed would be for the parties to have the benefit of the Court’s Order on the pending motion
23 concerning the merits of the Amended Complaint before the SAC and briefing thereon is filed;

24 WHEREAS the parties respectfully request one additional week be added to the time to
25 file an opposition brief and a reply brief, to account for potential scheduling conflicts; and

26 NOW, THEREFORE, the undersigned parties hereby stipulate and agree, and
27 respectfully request that the Court enter an order, as follows:

28 STIPULATION AND [PROPOSED] ORDER ON THE FILING AND
BRIEFING OF PLAINTIFFS’ SECOND AMENDED COMPLAINT

Case No. C-09-0222-Cw

1 1. Lead Plaintiffs shall file their Second Amended Complaint (“SAC”) no
2 later than 21 days after entry of the Court’s Order on the pending motion to dismiss;

3 2. Defendants shall have 21 days after the filing of the SAC in which to file
4 a response;

5 3. Plaintiffs shall have 21 days after the filing of Defendants’ response in
6 which to file any opposition;

7 4. Defendants shall have 14 days after the filing of Plaintiffs’ opposition in
8 which to file a reply.

9 IT IS SO STIPULATED.

10 Dated: December 21, 2009

11 GLANCY BINKOW & GOLDBERG LLP

12 By: /s/ Fredeick W. Gerkens, III

13 Frederick W. Gerkens, III (*pro hac vice*)

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28 *Lead Counsel for Plaintiff and the Class*

STIPULATION AND [PROPOSED] ORDER ON THE FILING AND
BRIEFING OF PLAINTIFFS’ SECOND AMENDED COMPLAINT

Case No. C-09-0222-Cw

1
2 O'MELVENY & MYERS LLP
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5 Dated: December 21, 2009
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8 By: s/ Meredith N. Landy
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11 Meredith N. Landy
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14 *Attorneys for Defendants Rackable Systems,
15 Inc., Thomas K. Barton and Madhu
16 Ranganathan*

17 I, Frederick W. Gerkens, III am the ECF User whose ID and password are being used to
18 file this Stipulation and [Proposed] Order Regarding the Filing and Briefing of Plaintiffs'
19 Second Amended Complaint. In compliance with General Order 45, X.B., I hereby attest that
20
21 Meredith N. Landy has concurred in this filing.
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23

24 By: Frederick W. Gerkens, III
25
26

27 Frederick W. Gerkens, III (*pro hac vice*)
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17 **ORDER**
18
19

PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 12/28
21 DATED: _____, 2009
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The Honorable Claudia Wilken
United States District Judge

STIPULATION AND [PROPOSED] ORDER ON THE FILING AND
BRIEFING OF PLAINTIFFS' SECOND AMENDED COMPLAINT

Case No. C-09-0222-CW